

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2632 of 1998

with

SPECIAL CIVIL APPLICATION NO. 2633 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 & 2 Yes - 3 to 5 No.

RAJESH VASANTLAL AGRAWAL

Versus

DISTRICT MAGISTRATE

Appearance:

SCA 2632/98:

MR NM KAPADIA for Petitioner

MR. HL JANI, AGP, for Respondents No. 1,3 & 4.

MR. BT RAO, ADDL. STANDING COUNSEL for for
Respondent No.3.

SCA 2633/98:

MR NM KAPADIA for Petitioner

MR. HL JANI, AGP, for Respondents No. 1,3 & 4.

MR. BT RAO, ADDL. STANDING COUNSEL for for
Respondent No.3.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 15/07/98

ORAL JUDGEMENT

The petitioners have, by way of these petitions under Article 226 of the Constitution of India have challenged the legality and validity of the orders of detention dated 24-3-98 passed against the respective detenus by the District Magistrate, Godhra, under Section 3 (2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act Act") . Since the grounds of detention supplied to the detenus in these petitions are same, these two petitions are disposed of by this common judgment and order.

Since both these petitions are capable of being disposed of on the ground that the detaining authority has not considered the question of invoking less drastic remedy of suspension, revocation or cancellation of the licence, it is not necessary for me to renarrate the allegations made in the grounds of detention supplied to the detenus. Suffice it to say that the detaining authority has recorded a finding that with a view to prevent the detenus from black marketing the essential commodity viz kerosene it is necessary to detain the detenus.

Mr. Kapadia, learned Advocate appearing for the petitioners in both these petitions has submitted that the less drastic remedy of suspension, revocation or cancellation of licence was available with the detaining authority and that aspect has not been considered by the detaining authority in the present cases and, therefore, on that ground the orders of detention which are under challenge in these petitions are required to be quashed and set aside. In these matters, affidavit in reply on behalf of the State Government has been filed by P.D.Shah, Under Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar. Having gone through the grounds of detention supplied to the detenus and the said affidavit in reply, nothing is revealed that this aspect of invoking less drastic remedy of suspension, revocation or cancellation of the licence which was available with the detaining authority was present in the mind of the detaining authority. Mr. Jani, learned Assistant Government Pleader, while reading paragraph 7 of the grounds of detention supplied to the detenus, submitted that the detaining authority has, in fact, considered the alternative of passing the detention orders. In my opinion, reading the grounds of detention, it is clear that the detaining authority has only considered the

aspect of launching criminal prosecution against the detenus and the possibility of the detenus continuing their illegal activities on being released on bail. However, the aspect of suspension, revocation or cancellation of licence was not considered. Assuming that the said aspect was present in the mind of the detaining authority, even then, there is no material which would indicate that the detaining authority could have satisfied itself that suspension, revocation or cancellation of licence would not be an effective remedy to prevent the detenus from continuing their illegal activities. When the detaining authority had no objective material whatsoever on which such a subjective satisfaction could have arrived at, then on the face of it, it cannot reach such conclusion. It will be nothing but surmise and conjecture and not a reasonable conclusion on some material. A similar view has been expressed by a Division Bench of this Court in Prabhudas Shantilal Suchak vs The State of Gujarat & ors Special Criminal Application No.158 of 1985 decided on 13-3-1985.

In the result, these petitions are allowed. The orders of detention dated 24-3-98 in both these petitions are quashed and set aside. The detenus Girdharilal Dwarkaprasad Agrawal and Arjunbhai Ramanbhai Bariya are ordered to be released forthwith if not required in connection with any other offence. Rule in both these petitions is made absolute accordingly with no order as to costs.

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